

***United States Court of Appeals
for the Second Circuit***



APPENDIX

No. 77-6118

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT.

LOUIS C. OSTRER, RITA OSTRER, JACK OSTRER
and DINA GELMAN,
Plaintiffs, Appellants

-against-

WILLIAM H. ARONWALD, ROBERT B. FISKE, JR.,
ALAN NAFTALIS, MARVIN SONTAG, JAMES KILLEEN,
EDWARD H. LEVI, and UNITED STATES OF AMERICA,

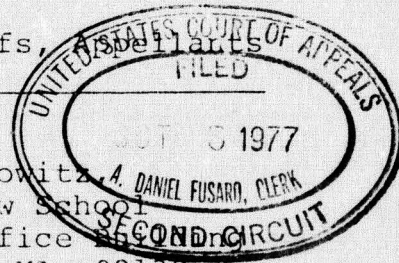
Defendants, Appellees.

On Appeal From The United States District Court For The
Southern District of New York.

Appendix to Brief of the Plaintiffs, Appellants
Volume II

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Co-counsel for Plaintiffs,
Appellants.



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -
LOUIS C. OSTRER,
RITA OSTRER,
JACK OSTRER, and
DINA GELMAN,

Plaintiffs,

-against-

WILLIAM I. ARONWALD,
ROBERT B. FISKE, JR.
ALAN NAFTALIS,
MARVIN SONTAG,
JAMES KILLEEN,
EDWARD H. LEVI, and
THE UNITED STATES OF AMERICA,

Defendants.
- - - - -

AFFIDAVIT OF MARVIN SONTAG

MARVIN SONTAG, being first duly sworn, deposes and says:

1. I am currently assigned to the Staff of the Assistant Regional Commissioner (Intelligence), North-Atlantic Region, as the Special Enforcement Assistant and Regional Strike Force Representative. I have occupied this position for approximately two years. In this capacity and in my previous positions in the Intelligence function, I have had considerable experience in Strike Force activities.

2. The IRS investigation disclosed evidence indicating that Louis Ostrer, Rita Ostrer and Dina Gelman among others may have violated criminal provisions of the Internal Revenue Code of 1954. Eventually this matter was referred by the Service to the Department of Justice with the recommendation that an open-ended grand jury investigation be instituted in this regard. The Department of Justice concurred on November 25, 1975, and it, in turn, referred the matter to the Strike Force in New York City with authorization for such grand jury proceedings being undertaken.

3. I attended a meeting on June 11, 1976 which was arranged at the behest of defense counsel to explore the possibility of Louis Ostrer's cooperation with federal authorities. Present at this meeting were the following: Mr. Aronwald; Mr. James Killeen, IRS Strike Force Representative, Manhattan Joint Strike Force; Mr. Alan Naftalis, the Strike Force attorney assigned to this matter; and attorneys for plaintiffs in the instant action, Mr. Alan Dershowitz,

Mr. Harvey Silverglate and Mr. Richard Wynn.

4. After introducing themselves, one defense counsel stated that Mr. Louis Ostrer was considering cooperating with the federal authorities, but among other things, he was concerned that the investigation might result in an indictment against Mr. Ostrer's son, Benjamin. Benjamin Ostrer was reportedly shortly to be seeking admission to the New York Bar and, one of the defense lawyers suggested that such investigation or indictment could hurt his prospects for admission. I was incredulous that such an indictment could have this effect if the son were eventually acquitted. Again one of the defense attorneys elaborated on this point and assured me that such an indictment could indeed pose an obstacle to Benjamin Ostrer's admission. Thereafter, Mr. Aronwald confirmed that this in fact was the case.

5. Thereafter, I stated that the investigation with respect to Mr. Ostrer's family was not actuated by a desire to punish Mr. Ostrer. (See paragraph 10 of the affidavit of Mr. Harvey A. Silverglate.) If anything, it was Mr. Ostrer who involved his relatives in activities which made them subject to investigation.

6. The subjects' attorneys inquired further about any investigation regarding Benjamin Ostrer. Mr. Killeen advised that the IRS had not recommended that the grand jury investigation includes Benjamin, and, in fact, that Benjamin had not been the subject of any criminal investigation by the Internal Revenue Service.

7. I attempted to further identify Benjamin Ostrer since I was not sure as to which of Mr. Louis Ostrer's sons he was. I explained that I did not serve in an operational capacity, but only had a general overview of the investigation. I therefore asked whether he were the son involved in "insurance deals" in Buffalo, New York. I was informed by the defense counsel that he was.

8. I then stated that while this son is not now a subject of the IRS grand jury investigation, I could not guarantee that evidence generated in the investigation might not subsequently make him a subject and possibly provide a basis for his indictment. I did not wish to leave any misconceptions. In fact, I recall suggesting they speak directly to their clients since they, better than any representative of the federal government, knew whether or not any of them might be subject to indictment.

9. I believe it was Mr. Naftalis who interjected at about this point that while Benjamin Ostrer was not subject to any IRS criminal investigation, other federal investigations had discovered evidence which might link him with other criminal activities.

10. The defense counsel further broached the question of Benjamin Ostrer's cooperating. I indicated that I believed that any knowledge which he might possess would only be of a corroborative nature. I indicated that I believed that his father would not have allowed him to deal directly with racketeers.

11. One of the defense lawyers expressed concern about Mr. Louis Ostrer's safety should he elect to cooperate. I responded that in my twenty-one years in the Service's Intelligence Division, I had known of no individual who had so cooperated in connection with criminal tax cases having been killed. To assure there were no misconceptions, however, Mr. Aronwald added that evidence which Mr. Ostrer could produce might lead to convictions in more serious criminal cases than those involving the tax laws.

12. One of defense counsel also inquired as to whether or not recommendations had been made against Louis Ostrer's father, Mr. Jack Ostrer. In response, I asked whether any of the attorneys there present represented Jack Ostrer. None of them replied in the affirmative. Accordingly, on behalf of the IRS, I declined to provide any information whatsoever regarding Jack Ostrer. Defense counsel indicated that I was being overly technical since this after all was Louis Ostrer's father and in addition, it was pointed out that his son, Mr. Louis Ostrer was, of course, represented at the meeting. I responded that fathers had a right of confidence even vis-a-vis their sons and accordingly refused to discuss Jack Ostrer.

13. With respect to this investigation and in particular insofar as it relates to these plaintiffs and additionally at all times pertinent to this civil action, I was acting within the line of my official duties. All actions I took in this connection were done in good faith and in the reasonable belief that they were entirely lawful.

14. To my knowledge the IRS had not received any tainted evidence or information in connection with the aforementioned investigation.

MARVIN SONTAG

Subscribed and sworn to before
me this day of August, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - -
LOUIS C. OSTRER,
RITA OSTRER,
JACK OSTRER, and
DINA GELMAN,

Plaintiffs,

-against-

WILLIAM I. ARONWALD,
ROBERT B. FISKE, JR.
ALAN NAFTALIS,
MARVIN SONTAG,
JAMES KILLEEN,
EDWARD H. LEVI, and
THE UNITED STATES OF AMERICA,

Defendants.
- - - - -

Civil Action

No.

AFFIDAVIT

AFFIDAVIT OF JAMES M. KILLEEN

1. I am currently employed as the IRS Strike Force Representative, Manhattan Joint Strike Force and have served in this capacity for the last three years.

2. I have reviewed the affidavit submitted by Mr. Marvin Sontag in the instant action and the statements made by Mr. Sontag are accurate.

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3. With respect to this investigation and in particular insofar as it relates to these plaintiffs and additionally at all times pertinent to this civil action, I was acting within the line of my official duties. All actions I took in this connection were done in good faith and in the reasonable belief that they were entirely lawful.

4. To my knowledge the IRS had not received any tainted evidence or information in connection with the aforementioned investigation.

JAMES M. KILLEEN

Subscribed and sworn to before

me this day of August, 1976

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LOUIS C. OSTRER,	:	
RITA OSTRER,	:	
JACK OSTRER, and	:	
DIHA GRIMAN,	:	
	:	
Plaintiffs	:	
	:	
-against-	:	<u>AFFIDAVIT</u>
	:	
WILLIAM I. ARONWALD,	:	76 Civ. 3701
ROBERT B. FISKE, JR.,	:	
ALAN NAFTALIS,	:	
MARVIN SONTAG,	:	
JAMES KILLEEN,	:	
EDWARD H. LEVI, and	:	
THE UNITED STATES OF AMERICA,	:	
	:	
Defendants.	:	

-----X

STATE OF NEW YORK)
COUNTY OF NEW YORK : ss.:
SOUTHERN DISTRICT OF NEW YORK)

Alan R. Naftalis, being duly sworn, deposes and says:

1. I am a Special Attorney assigned to the Joint Strike Force Against Organized Crime and Racketeering for the Southern District of New York and I have been named as a defendant in the above-captioned matter.

2. This affidavit is submitted in opposition to the relief sought by the plaintiffs which your deponent believes to be inconsistent with the facts of this case and the applicable law.

3. I have read the affidavit of William I. Aronwald submitted in the above-captioned matter and I have particularly reviewed with care paragraphs 9 and 12 of that affidavit and find that it accurately represents my recollection of the two meetings described in its paragraphs.

4. I have read the affidavit of Nancy Rosner, Esq. filed by the plaintiffs in this action. On July 14, 1976 Mrs. Rosner and I were counsel to opposing parties in litigation before the Honorable Robert Ward before Part 1 of the United States District Court for the Southern District of New York.

2.

During the course of that litigation I never approached the defense counsel table nor removed or obtained any material contained thereon. During the course of my presentation I either stood at Government counsel table or at the lectern immediately adjacent to Government's counsel table. This same lectern was used by Mrs. Rosner in making her presentation to the Court. During her oral arguments Mrs. Rosner often placed documents on Government's counsel table which was adjacent to the lectern. At no time did I examine or touch any of her documents placed on the lectern or on Governmental counsel table. It is the assertion of Government counsel that the draft affidavit referred to by Mrs. Rosner in her affidavit and by the plaintiffs in their moving papers was either purposely or accidentally placed by Mrs. Rosner in the papers belonging to counsel for the United States. After the hearing concluded I collected my paper work from Government counsel table and returned to my office. Upon my return I attempted to organize my paper work concerning the hearing that had just been concluded. In among the papers that I had on my counsel table was a draft affidavit. This was the first time I had ever seen that document and I did not know how it got into my papers. I skimmed the document in order to ascertain what it was since

its caption stated that I was a defendant in some form of civil action. I thereafter brought this draft affidavit to my superior William I. Aronwald. To the best of my recollection the draft affidavit I saw on that date is identical to the affidavit of Louis Ostrer filed by the plaintiffs in the instant civil litigation.

It is my understanding that Mr. Aronwald spoke with Richard Wynn, counsel to plaintiff Dina Gelman herein, to inform him of our discovery of this draft affidavit. Subsequently Mr. Aronwald spoke with Mrs. Rosner and he agreed to return the draft affidavit to her and not make any copies

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of it. I know that no copies were made of that draft affidavit nor were any notes prepared from that affidavit. Moreover I personally returned the draft affidavit to a representative of Mrs. Rosner's office on July 14, 1976.

WHEREFORE, your deponent respectfully submits that the relief sought be in all respects denied and the action herein be dismissed.

Alan R. Haffalis
Special Attorney
U. S. Department of Justice

Subscribed and sworn to before
me this day of August, 1976
